IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.326 OF 2003

IN

SUMMARY SUIT NO.2271 OF 2002

Lalit Kumar .. Plaintiff

versus

Mr.Ramesh Batavia .. Defendant

...

Ms.K. A.Shah for Plaintiff.

Mr. B.C.Kaushik for Defendant.

CORAM : D.G. KARNIK, J

DATED : 7th February, 2005.

P.C:-

1. Heard learned counsel for the parties. The plaintiff through his counsel gives up the claim for interest.

2. The plaintiff sold, supplied and delivered to the defendant goods under three different invoices. As the defendant did not make the payment the plaintiff

has filed this suit for recovery of the money. By filing an affidavit in reply the defendant has admitted the receipt of the goods but, has contended that the goods were not of proper quality and therefore he is not liable to make the payment.

3. Prior to the suit, the plaintiff had issued to the defendant a notice of demand dated 24th January, 2002. The notice was replied by the defendant through an advocate on 6th February, 2002. In the said reply the defendant had admitted the receipt of the goods, and stated to have issued the two cheques towards the part payment but further stated that because of money crisis in the market he had been unable to recover the money from his customers and therefore was not able to make the payment forthwith. He further promised that he would make the payment as soon as he received the payment from his customers. There is no whisper in the reply that the goods were defective and/or his customers had refused to pay on account of any defect in the goods. The defendant has received the goods and has resold them in the market. In the circumstances the defence that the goods were defective does not inspire any confidence and is purely an after thought. Hence the defendant can only

be granteda conditional leave to defend the suit.

4. The defendant is granted conditional leave to defend the suit subject to his depositing in court Rs.1,11,302/- (which is the principal amount and the claim for, interest having been given up) within a period of six weeks. On depositing the money the plaintiff is at liberty to withdraw the same by furnishing security to the satisfaction of the Prothonotary and Senior Master. On deposit of the money the suit shall stand transferred to the list of commercial causes. The defendant shall file the written statement within one month.

D.G.KARNIK, J